



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1996

Mr. Burton Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR96-2154

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37437.


The Texas Department of Human Services (the "department") received a request from the complainant for all documentation regarding a civil rights complaint filed against the department. You assert the information is excepted from disclosure under section 552.103 of the Government Code.

Section 552.103(a) provides an exception for information relating to litigation to which the governmental body is or may be a party. To show that section 552.103(a) is applicable, a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have provided information showing that the individual requesting the records has filed a complaint of sexual discrimination with the Equal Employment Opportunity Commission ("EEOC"), which deferred jurisdiction to the Texas Commission on Human Rights (the "TCHR"). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that a complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. Our review of the documents at issue shows that they are related to the subject of the anticipated litigation.

You have shown the applicability of section 552.103(a). We note, however, that if the requested information is issued in a public report or otherwise made available to the public generally, you must also provide the information to this requestor. Gov't Code § 552.007 (information made public may not be selectively withheld). We also note that section 552.103(a) is not generally applicable if the other party to the anticipated litigation has obtained or seen the information, or when the anticipated litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. Thus, memorandums from the requestor to department personnel or by them to her, employment applications filled out by the requestor, responses to department settlement offers written by the requestor and any other correspondence from the department to the requestor contained in the information submitted to this office cannot be withheld under 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 37437

Enclosures: Submitted documents

cc: Ms. Cyndi Vivona
701 W. 51st Street, C-723
Austin, Texas 78714
(w/o enclosures)